

10292 Types of Pretrial Motions

10292.1 Bill of Particulars Addressed to Complaint

If a Motion for a Bill of Particulars (seeking specificity regarding the complaint allegations) is filed and if the complaint contains insufficient detail, the Regional Office should furnish the particulars. Sec. 10264.2. If, however, the complaint is sufficiently detailed, the motion should be opposed. In the event of an adverse ruling, the Regional Office should promptly furnish the particulars.

10292.2 Bill of Particulars Addressed to Answer

A Motion for a Bill of Particulars addressed to the answer is rare; however, where an affirmatively pleaded defense lacks sufficient details, counsel for the General Counsel should make such a motion.

10292.3 Where Answer Improper or Deficient or No Answer Filed

Where an answer is improper or deficient or where no answer has been filed, the Regional Office should attempt to resolve the problem. If unsuccessful, a motion to strike or a Motion for Default Judgment, as appropriate, may be filed. See Secs. 10280.2 and .3. In evaluating whether to file such a motion, the Regional Office should not rely on hypertechnicalities and should balance the probability of success against the possibility of undue delay.

For a discussion of answers and related motions see generally Sec. 10280.

10292.4 Pretrial Discovery Devices

The Federal Rules of Civil Procedure providing for compulsory pretrial discovery have been held not applicable to Board proceedings. *NLRB v. Valley Mold Co.*, 530 F.2d 693 (6th Cir. 1976); *Pepsi-Cola Bottling Co.*, 315 NLRB 882 (1994). Any attempt to use such discovery should be resisted. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978).

10294 Prehearing Postponements

10294.1 General Policy

Cases set for hearing should be heard on the day set and postponements should be granted only for good cause shown.

Form NLRB-4338, with instructions for requesting postponements and with the names and addresses of the parties appearing thereon, should accompany each notice of hearing.

10294.2 Request

Postponement of the opening date of a hearing is initiated by request (or motion) for postponement by the party seeking it. Such a request should be filed with the Regional Director under the following circumstances:

- Where all parties agree or no party objects
- Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation
- Where settlement negotiations are in progress
- Where issues related to the complaint are pending before Advice or Appeals
- Where more than 21 days remain before the scheduled date of hearing. Sec. 102.16, Rules and Regulations.

In all other circumstances, such motions should be filed with the Division of Judges as set forth in Sec. 102.24, Rules and Regulations.

The motion/request should be filed as promptly as practicable and in writing; three copies should be served on the Regional Director or the Division of Judges, as appropriate, with copies served simultaneously on each of the other parties. The request should contain *detailed* cause (i.e., not merely “prior commitments”) and should contain suggested date(s) for resetting. The requesting party must ascertain in advance and set forth in the request the positions of all other parties to the proceedings. Where appropriate, the parties may make a joint request.

10294.3 Ruling on Request

Absent extraordinary circumstances, the Regional Director or Division of Judges should rule on the request only after opposing parties have the opportunity of making known their positions.

If the Regional Director grants the request, a new hearing date should be obtained from the Division of Judges. Sec. 10256.1. The Regional Director should then issue an Order, serving a copy on each party.

10294.4 Followup Action

Postponements normally are to a day certain, but may, if demanded by circumstances, be indefinite (*sine die*), e.g., in the event of a settlement. Further action with respect to such postponements may include rescheduling by means of formal order or cancellation of the hearing.

10294.5 Request and Ruling Included in Record

Postponement requests, statements of opposition, and rulings thereon should be introduced into the record at the hearing. Sec. 10384.